

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

NATHAN HOYE,

Petitioner,

vs.

DISTRICT ATTORNEY OF ALLEGHENY
COUNTY, ATTORNEY GENERAL OF
PENNSYLVANIA; WARDEN, SCI-
SOMERSET,

Respondents.

CA No. 2: 19-cv-1309

MEMORANDUM OPINION

Pending before the court are the petition for writ of habeas corpus filed by petitioner Nathan Hoyer (ECF No. 5) and the report and recommendation (“R&R”) of the magistrate judge, which recommended that the petition for writ of habeas corpus be dismissed without prejudice for failure to exhaust state remedies. (ECF No. 30). Petitioner was served with the R&R at his listed address and advised that written objections were due by March 20, 2020. To date, petitioner has not filed any objections nor has he sought an extension of time in which to do so.¹

As noted in the R&R, petitioner has pending an appeal before the Superior Court of Pennsylvania challenging the validity of his sentence at CP-02-CR-0004077-2018. As such, the claims presented in this habeas petition are unexhausted, but not procedurally defaulted as they remain pending in state court. The court has reviewed the matter and concludes that the R&R

¹ If a party does not file timely objections to a magistrate judge’s report and recommendation, the party may lose its right to *de novo* review by the district court, although the court must still give “reasoned consideration” to the magistrate judge’s report before adopting it. *Henderson v. Carlson*, 812 F.2d 874, 878-79 (3d Cir. 1987). The district court should, as a matter of good practice, “satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” Fed.R.Civ.P. 72(b), advisory committee notes.

correctly analyzes the issues and makes a sound recommendation. Accordingly, after *de novo* review of the petition and documents in the case, together with the R&R, the petition for writ of habeas corpus will be dismissed without prejudice for failure to exhaust state remedies.

Jurists of reason would not find it debatable that the petition should be dismissed without prejudice. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Accordingly, a certificate of appealability will be denied. The denial of a certificate of appealability does not prevent petitioner from appealing the order denying his petition so long as he seeks, and obtains, a certificate of appealability, from the court of appeals. *See* Fed.R.App.P. 22(b)(1), (2).

March 31, 2020

BY THE COURT:

/s/ Joy Flowers Conti
Joy Flowers Conti
Senior United States District Judge

cc: NATHAN HOYE
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Alicia H. Searfoss
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(via ECF electronic notification)